

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JERRY L. GITTHENS and DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE BASE, Okla.

*Docket No. 96-952; Submitted on the Record;
Issued January 21, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a ratable hearing loss that would entitle him to a schedule award.

On October 28, 1993 appellant filed a claim for noise-induced hearing loss due to factors of his federal employment. By decision dated November 23, 1994, the Office of Workers' Compensation Programs accepted that appellant sustained an employment-related loss of hearing but found that his hearing loss was not sufficiently severe to be ratable for purposes of a schedule award. The Office further found that appellant was entitled to medical treatment for his injury. Appellant requested a review of the written record by an Office hearing representative. By decision dated March 1, 1995, an Office hearing representative affirmed the Office's November 23, 1994 decision, noting that appellant's entitlement to medical treatment included hearing aids.

The Board has duly reviewed the record in this case and finds that appellant does not have a ratable hearing loss for schedule award purposes.

The compensation schedule of the Federal Employees' Compensation Act¹ specifies the number of weeks of compensation to be paid for permanent loss of use of various members of the body. The Act does not, however, specify the manner in which the percentage loss of a member is to be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² For consistent results and to ensure equal justice

¹ 5 U.S.C. § 8107.

² *Danniel C. Goings*, 37 ECAB 781 (1986).

under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.³

The Office evaluates hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, using hearing loss levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second (cps). The losses at each frequency are added together and averaged, and a “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday conditions.⁴ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss. The binaural hearing loss is determined by first calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater loss, and the total is divided by six to arrive at the amount of binaural hearing loss.⁵ compensation purposes.⁶

Dr. Joseph Leonard, an Office referral physician and Board-certified otolaryngologist, submitted a September 27, 1994 medical report and an audiogram of the same date, performed on his behalf, which conforms to the A.M.A., *Guides*. The Office medical adviser applied the Office’s standardized procedures to Dr. Leonard’s audiogram. Testing for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cps revealed losses of 5, 5, 5 and 35 decibels, respectively. These losses were totaled at 50 decibels and divided by 4 to arrive at an average hearing loss of 12.5 decibels. The average loss was reduced by 25 decibels (the first 25 decibels are discounted, as discussed above) to equal 0 decibels, which was multiplied by 1.5 to arrive at a 0 percent hearing loss for the right ear.

Testing for the left ear at frequencies of 500, 1,000, 2,000 and 3,000 cps revealed losses of 0, 5, 5 and 40 decibels, respectively. These losses were totaled at 50 decibels and divided by 4 to arrive at an average hearing loss of 12.5 decibels. The average loss was reduced by 25 decibels (the first 25 decibels are discounted, as discussed above) to equal 0 decibels, which was multiplied by 1.5 to arrive at a 0 percent hearing loss for the left ear. Thus, the Office properly concluded that appellant had not sustained a compensable loss of hearing. The Board finds that the medical evidence, as represented by Dr. Leonard, reveals that, although appellant has sustained an employment-related loss of hearing, it is not sufficiently great to be ratable for purposes of entitlement to a schedule award under the Act.⁷

³ *Henry L. King*, 25 ECAB 39 (1973).

⁴ American Medical Association, *Guides to the Evaluation of Permanent Impairment*, page no. 224 (4th ed 1993).

⁵ *Id.*

⁶ See *Danniel C. Goings*, *supra* note 2.

⁷ *Royce L. Chute*, 36 ECAB 202 (1984).

The decision of the Office of Workers' Compensation Programs dated March 1, 1995 is hereby affirmed.⁸

Dated, Washington, D.C.
January 21, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ Following the Office's March 1, 1995 decision, appellant submitted additional evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal; *see*